

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES DIXON,

Plaintiff,

Case No. 1:07-CV-640

v.

Hon. Robert J. Jonker

KENT COUNTY CORRECTIONAL
FACILITY, et al.,

Defendants.

ORDER

This matter is before the Court on two Report and Recommendations from the Magistrate Judge (docket ## 31, 53). The first Report recommends dismissal for failure to state any federal claim, and the second recommends denial of a motion from Plaintiff for partial summary judgment. The Court agrees with the first Report of the Magistrate Judge that Plaintiff has failed to state a federal cause of action, and that the action should accordingly be dismissed in its entirety. Of course, the dismissal of Plaintiff's state law claims is without prejudice. Because the Court accepts the recommendation of dismissal, consideration of the second report, and related objections, is moot.

Plaintiff has objected to the Magistrate's first Report in multiple filings (docket ## 32, 34, 37 and 38). Under the Federal Rules of Civil Procedure, when a party files timely objections to a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT,

MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has conducted a de novo review of the entire record here, and the Court concludes that Magistrate Judge Brenneman's first Report and Recommendation (docket # 31) is factually sound and legally correct, and that Plaintiff's objections are unfounded.

Plaintiff claims he was injured while an inmate at the Kent County Correctional Facility, and that he was denied adequate medical care. As the Magistrate Judge carefully points out, however, the record included with Plaintiff's complaint demonstrates that he received regular medical attention. It is true plaintiff did not always like the course of treatment prescribed, and that he believed the care failed to meet the applicable standard of care. But nothing in the complaint, or in any of the filings that Plaintiff has made in this case comes remotely close to establishing a series of allegations sufficient to state a claim under the controlling standard of deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Farmer v. Brennan*, 511 U.S. 825 (1994). In the absence of any viable federal claim, this Court declines to exercise any supplemental jurisdiction over state law claims. Plaintiff is free to bring his state law claims in an appropriate state law forum. In addition, to the extent Plaintiff has any other claims, state or federal, arising out of his incarceration, he can bring them in another appropriate action.

ACCORDINGLY, IT IS ORDERED that the first Report and Recommendation of the Magistrate Judge (docket # 31), is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' motion to dismiss (docket # 16), is **GRANTED**, and that this action is **DISMISSED** for failure to state a federal claim under Rule 12(b)(6), and with respect to any state law claims, based on this Court's decision not to exercise supplemental jurisdiction under 28 U.S.C. 1367.

Dated: February 26, 2009

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE